

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. SPEX-23-2
	*	
NAGEL FARM	*	SPECIAL EXCEPTION AND VARIANCE
SERVICE II, LLC	*	REQUEST APPLICATION
(Wye Mills location)		
* * * * *	* * * * *	

The Board of Appeals (the “Board”) held a hearing on April 17, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the applications of Nagel Farm Service II, LLC (the “Applicant”).

The Applicant requested variances and modification for Special Exception to permit the construction of two (2) grain tanks at heights of 134.23’ and 115.5’ where the maximum height of 100’ is a supplemental standard for the storage structure. The property is located at 14209 Old Wye Mills Rd., Wye Mills, MD (“Property”). Chairman Frank Cavanaugh, Vice Board Members Paul Shortall, Greg Gannon, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Planner Elisa DeFlaux and Board Secretary Christine Corkel appeared on behalf of the County.

STATEMENT OF THE CASE

The existing zoning for the Property is Village Hamlet (VH) and Critical Area Overlay (CAO). Within that zoning district, there is a maximum height of 100’ for grain processing, drying, and storage structures (wholesale and commercial) as indicated in the Talbot County Code § 190-12.1 (Table II-12, Structure Height). The Applicant seeks to construct two grain storage tanks at its Wye Mills grain storage location at heights of 134.23’ and 115.5’. The request for the 115.5’ tank is an after the fact request.

These improvements will provide supplemental grain storage and accessory support structures for the existing *Grain Processing, Drying, and Storage (wholesale commercial)* use permitted by Special Exception in the VH zoning district.

The Planning Commission approved Major Site Plan on January 3, 2023. The Planning Commission recommended approval of the current Special Exception amendments on March 1, 2023.

HISTORY OF PROPERTY

The subject Property has expanded over the decades. The grain storage use required a Special Exception and, historically, storage structures over 40’ required a height variance. The

Property was first granted a Special Exception for grain storage in 1977 (Appeal No. 237), to allow two grain storage tanks, in addition to a tank that existed since 1948.

In 1979, the Board granted a modification to the Special Exception (Appeal No. 357) to construct an additional two (2) grain storage tanks. At this time, the Board also granted a height variance of the maximum 40' height. Only one of the two approved tanks were constructed in the allotted time frame.

In 1983, the Property owner was again granted a Special Exception modification, and variance of the 40' height restriction, to construct an additional grain tank (Appeal No. 496).

The Nagel company purchased the property in 1994. In 1995, the Board granted a modification to the Special Exception to construct two additional grain storage tanks and also granted a variance for reduction of the 200' setback. (Appeal 947). Applicant never constructed the approved tanks.

In 1997, the Applicant again requested a modification to the Special Exception to construct two (2) grain storage tanks and for a variance of the 200' setback. The Board, again, granted the request (Appeal No. 1036).

In 1999, the Board granted a modification to the Special Exception to construct three additional grain storage tanks (Appeal No. 1092).

In 2015, the Board granted a modification of the Special Exception to approve six (6) grain storage tanks, one grain elevator, and one grain dryer, and granted eight setback variances necessary to construct the grain tanks (Appeal No. 14-1625).

The County zoning Code was amended in 2018 modifying setback requirements in the VH district. As modified, "new or expanded structures shall maintain the minimum setback from lot lines of the existing structures on the same property.

SUMMARY OF TESTIMONY

Attorney Zach Smith appeared on behalf of the Applicant. Chip Nagel provided testimony on behalf of the Applicant. The request for variance is for two (2) grain storage tanks. The first is a proposed 134.23' grain tank. The second is an after the fact variance request for a tank that has already been built at a height of 115.5'. The existing tank was previously approved in 2015 but not constructed within the allotted time frame for approval to do so.

According to Mr. Smith, the Nagel Wye Mills grain storage facility has existed for decades. The Property provides a critical service to farmers and agricultural production in Talbot County. The need to expand is driven by two factors: (1) Local farmers are producing more crops than they have in the past. (2) Demand is expected to increase because Perdue has closed its Easton

grain storage facility. It is expected that local farmers will increasingly need to rely on Applicant's facilities in Cordova and Wye Mills.

The Wye Mills facility is restricted by site constraints. The proposed location of the new tank is the only conceivable location on the property to construct it.

By way of the Planning Commission's recommendation, the proposal is consistent with the Comprehensive Plan. The plan has obtained support from the Farm Bureau.

The Applicant does expect more traffic to the facility, but not as a direct result of the new tank that will be constructed. There may be increased traffic for the reason that the facility expects more customers as a result of the closed Perdue facility. Without additional grain storage, the expected increasing demand for grain storage may result in temporary outdoor ground storage, which has a higher likelihood of losses.

The Board considered whether dust would be increased from the project. Applicant testified that the new tank will not result in additional dust that exists at the facility.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board supports the Application. The Board is persuaded by the fact that there is no opposition from surrounding community members for the addition of the grain tank. The Board finds that there is a compelling need for additional grain storage in the County. The expansion is also consistent with the County's Comprehensive Plan.

Variance

The Board finds that the Applicant has satisfied the standards for granting a variance.

A. Unique physical characteristics exist such that literal enforcement of the height requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The property was developed prior to existing zoning regulations. The additional height is necessary to accommodate increased demand for grain storage. The Applicant would face practical difficulty if required to construct additional tanks, as opposed to receiving height variances for the existing tank and proposed tank. When storage tanks are full, Applicant must temporarily store grain on the ground, resulting in losses, which creates additional difficulty for Applicant.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed. Higher yields of grain production and the anticipated closing of the Perdue facility have created a need for increased grain storage. The need for additional grain storage exists in Talbot County and the Nagel facilities are helping to address the increased demand. Adding additional storage by height variance is a practical way to address the growing demand that benefits the local agricultural community.

C. The variance is not requested for greater profitability or lack of knowledge of the restrictions. The facility expansion is necessary to accommodate increased grain production by local farms. While the grant of a variance may lead to increased profits for the Applicant, it is granted for the benefit of local agriculture, which is consistent with the Comprehensive Plan.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The use supports the vision statement of the Comprehensive Plan to protect agricultural lands and harvests on lands of the County, which is beneficial to the public interest. The facility has coexisted with neighboring properties for decades and no public comment has been received in response to this Application.

E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The site is constrained by its existing development pattern, on-site circulation, and functionality. The variances will not exceed the height of the existing 140' grain elevator.

Special Exception

The Board finds by a preponderance of the evidence that the Application should be granted for modification to an existing Special Exception. The standards for granting a special exception are met:

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan.

The Board's decision is based, in part, on analysis of Chapters 2 and 9 of the 2016 Comprehensive Plan. Chapter 2.16 addresses Village growth stating that it should derive primarily from infill, redevelopment, and limited new development, and should be compatible with existing character and density of the village. Chapter 9.12 addresses new development and redevelopment in villages stating that it shall be compatible with existing character in terms of land use, density, scale, setbacks, site layout, mix of use, and general design to maintain their unique "sense of place." In Village Planning Areas, Master Plans shall be required for review of small scale and major subdivision, and major site plans. Master Planning shall include a comprehensive study addressing compatibility and suitability of existing and proposed land uses, infrastructure, facilities and services associated with new development and redevelopment. Chapter 9.13 addresses new village residential development and infill should be designed to be compatible with and complement that of the adjacent or surrounding community. The Board finds that Applicant's request is compatible with these criteria.

The retention and redevelopment of existing business is supported by the 2016 Comprehensive Plan, with emphasis on the importance of the protection of the agriculture and agricultural support businesses. The Comprehensive Plan states that agriculture contributes over 50% of the Talbot County land use area. Conservation of working agricultural lands is a recurring theme throughout the plan. Ensuring that agricultural support businesses can continue to operate and

provide a level of service to the active farming community in the County is imperative to ensure that local farmers have facilities in close proximity to transport their harvest for sale and distribution.

2. The use will comply with the standards of the zoning district in which it is located, except as those standards are modified by the granting of a variance with this decision. The request complies with the Code design standards except for the variances that are being granted with this decision. Additionally, the Applicant shall address and comply with the design standards listed in Section 190-10.4.C.7 as part of the site plan and building permit process for the design standards for the proposed building. The Planning Commission granted a landscaping plan and loading space waiver.

3. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses, with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property. The bulk and general appearance will be the same to the existing operation. The proposed tank is taller than existing tanks but not taller than the existing grain elevator. The proposed tank would become part of the existing facility where the grain operation is currently located. The facility has operated in this location for many years. The addition of a grain tank will not generate negative impacts to neighboring property values.

4. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental features. An additional grain storage tank for this facility would allow for increased area available for grain storage and drying. The proposed construction would not likely result in any material changes from how the business currently operates.

5. The use will not have a significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

6. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The Applicant is not proposing changes to the ingress and egress points for operation.

7. The use will not produce traffic volumes, which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. The project plan was provided to State Highway Administration and it confirmed that it has no concerns or comments related to the proposed project.

8. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area. The site was designed to accommodate parking and circulation on site. The operation will use the traditional traffic patterns that are in place today.

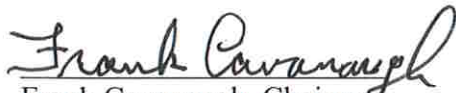
9. The use will not significantly, adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The site does not contain any environmental features that could be impacted by the installation of the grain tank. Stormwater management will be addressed with the enhancement of the existing swale adjacent to the grain storage area.


Mr. Krebeck moved that the Board approve the modification of the Special Exception and grant the requested variance subject to staff conditions. The motion was seconded by Mr. Gannon. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests are granted subject to staff conditions.

1. The Applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Site Plan and Landscaping Plan as spelled out in the Talbot County Code.

2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.


IT IS THEREFORE, this 2nd day of May, 2023, **ORDERED** that the Applicant's requests for variance and Special Exception are GRANTED.


Frank Cavanaugh, Chairman


Paul Shortall, Jr.


Greg Gannon


Zakary A. Krebeck


Jeff Adelman